PERLSTEIN, SANDLER & McCRACKEN, LLC
ATTORNEYS AND COUNSELORS AT LAW
10 WATERSIDE DRIVE, SUITE 303
FARMINGTON, CT 06032
TELEPHONE (860) 677-2177 FACSIMILE (860) 677-0019

MATTHEW N. PERLSTEIN
SCOTT J. SANDLER
GREGORY W. McCRACKEN

CAROLE W. BRIGGS
LAURAMARIE SIROIS

TESTIMONY OF SCOTT J. SANDLER, ESQ. CONCERNING RAISED BILL NO. 393 AN ACT CONCERNING CONDOMINIUM ASSOCIATION LEASING RESTRICTIONS

I. SUMMARY OF TESTIMONY:

Raised Bill No. 393 proposes to eliminate any rules adopted by the association of a common interest community that restrict the leasing of units, unless such rules are incorporated into the declaration of the community prior to January 1, 2015.

For the reasons set forth below, the Connecticut General Assembly should not adopt Raised Bill No. 393.

II. BIOGRAPHY OF SCOTT J. SANDLER:

Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). He was an Associate Editor of the Quinnipiac Law Review.

Mr. Sandler is a member of the American Bar Association, the Connecticut Bar Association, and the Hartford County Bar Association. He is also a member of the Executive Committee of the Real Property Section of the Connecticut Bar Association.

Since 2001, Mr. Sandler has focused on representing condominium, community, and homeowner associations.

Mr. Sandler is a past President of the Connecticut Chapter of the Community Associations Institute. He is presently the Chairman of the Chapter's Legislative Action Committee.

Mr. Sandler is a member of the College of Community Association Lawyers ("CCAL"). CCAL is a prestigious group of attorneys who have distinguished themselves through contributions to community association law and who have committed themselves to high

standards of ethical conduct. Of the thousands of attorneys practicing community association law in the United States, fewer than 150 have been granted membership in CCAL. Mr. Sandler is one of only three attorneys in Connecticut who are members of CCAL.

Mr. Sandler is a partner in the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut, which currently provides legal services to approximately 450 condominium and homeowner associations throughout the State.

III. ANALYSIS:

The General Assembly SHOULD NOT adopt Raised Bill No. 393.

Under the current provisions of Subsection 47-261b of the Connecticut Common Interest Ownership Act, the association of a condominium or other common interest community has limited authority to regulate the use of or activities within units.

Subsection 47-261b(f) of the Act permits the association to adopt rules regulating leasing only "to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in common interest communities or regularly purchase those mortgages . . ." Thus, the association may adopt a rule regulating the ability of an owner to lease his or her unit only to the extent necessary to meet mortgage underwriting guidelines.

The association may adopt any restrictions on the use of or activities in units that go beyond these limits, only by amending the declaration of the community. Under Subsection 47-236(f) of the Act, such an amendment requires the vote or agreement of unit owners having at least 80% of the total voting power in the association. The amendment must also provide reasonable protections, such as a "grandfathering" clause, for a previously permitted use or activity.

The General Assembly should not adopt Raised Bill No. 393 because it will make it more difficult for unit owners to sell their units, it will increase the cost of living in a condominium or common interest community, and it will make it easier for individual investors to take control of the community away from the unit owners that live there.

1. <u>If adopted, Raised Bill No. 393 will make it more difficult for unit owners to sell their units.</u>

Many condominiums and common interest communities seek certification from the Federal Housing Administration ("FHA"), or approvals through Fannie Mae or Freddie Mac, so that purchasers of units may obtain mortgages backed by those entities. FHA, Fannie Mae, and Freddie Mac have a number of similar standards that they uses to determine whether a community qualifies for certification or approval. One such standard is whether at least 50% of the number of units in the community are occupied by owners, rather than renters. If less than 50% of the units are owner-occupied, then the community does not qualify for FHA certification or approval by Fannie Mae or Freddie Mac.

Mortgages backed by FHA, Fannie Mae, or Freddie Mac can make the purchase of a home more affordable for the buyer. Thus, FHA certification and approval by Fannie Mae or Freddie Mac enlarges the pool of potential buyers to include those who cannot afford a conventional mortgage that is not backed by one of these entities.

If enacted, Raised Bill No. 393 would prevent the association from adopting a rule to limit leasing to meet the underwriting requirements of these entities. Instead, the association would have amend its declaration by the vote or agreement of owners having at least 80% of the total voting power. This is an unduly burdensome requirement for the following reasons:

a. Depending on the size of the community, it may be very difficult to obtain the consent of owners having 80% of the total voting power on any issue whatsoever;

b. Investor-owners are unlikely to vote or agree to the amendment. If a significant number of units are already owned by investors, the association may never be able to obtain the approval necessary to adopt the amendment; and

c. The preparation and adoption of an amendment to the declaration is an expensive process, requiring the assistance of knowledgeable legal counsel.

Since it is unlikely that the association will be able to adopt the amendment, it will not be able to impose leasing restrictions. Without such restrictions, the association will be unable to take action to maintain its eligibility for FHA certification or approval by Fannie Mae or Freddie Mac. This will have the effect of reducing the pool of potential buyers to just those that can afford a conventional mortgage and do not need a mortgage backed by one of these entities.

Therefore, Raised Bill 393 would make it more difficult to sell units in the community.

2. If adopted, Raised Bill No. 393 will increase the cost of living in a condominium or common interest community.

Section 47-255 of the Act requires associations to obtain and maintain a master insurance policy. The cost of the policy is a common expense shared by the members of the community.

As the number of leased units in a community increases, so does the amount of the premium charged by insurance companies that underwrite master policies. If the association cannot adopt rules that regulate leasing, it will have no ability to limit the number of units that are leased. As more units are leased, the unit owners in the community will have to pay more for the master insurance policy.

Therefore, Raised Bill No. 393 will increase the cost of living in the community.

3. If adopted, Raised Bill No. 393 will make it easier for individual investors to take control of the community away from the unit owners that live there.

Unit owners have the ability to vote on a number of issues concerning the operation and governance of their associations, including the election of their board members. Votes are allocated to each unit in the community. If owners own multiple units, they may cast a vote for each unit that they own.

Investor-owners have the ability to own large numbers of units in the community. This gives them greater voting power than the owner of single unit who resides in the community.

If the association cannot regulate the number of units that may be owned by investors, then it cannot prevent an investor from acquiring enough units to enable him or her to seize control the association, regardless of the interests of the owners who live in the community.

For the reasons set forth above, the General Assembly should not adopt Raised Bill No. 393.

If I can furnish the Committee with any further information or assistance, please do not hesitate to contact me.

Respectfully Submitted,

Scott J. Sandler, Esq.
Perlstein, Sandler & McCracken, LLC
10 Waterside Drive, Suite 303
Farmington, CT 06032
Telephone: (860) 677-2177
Facsimile: (860) 677-0019
Email: sjs@ctcondolaw.com